

## Report to the Public Safety & Neighborhood Services Committee

Attention: Committee on Public Safety and Neighborhood Services Committee  
Agenda for March 28, 2007

From: John Rivera  
Public Safety and Neighborhood Services Committee Consultant

Date: March 28, 2007

Re: Proposed Zero Tolerance of Graffiti Taggers Ordinance

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### **STAFF RECOMMENDATION**

Refer the proposed Zero Tolerance of Taggers Ordinance to the Mayor and City Attorney and request that the City Attorney work with the Committee consultant to return to this Committee in 60 days with an ordinance that is as close as possible to the recommendations in the report. Request the proposed ordinance be implemented within the confines of the City's budget parameters.

The proposed ordinance will do the following:

#### **Declarations and Purpose**

- Finds and declares that graffiti is a crime that damages property, constitutes a public nuisance, and is a crime that can be related to gang activity.
- Finds and declares that all individuals, both juveniles and adults, who violate the City's graffiti laws shall be prosecuted, pay for the damage, and face other penalties.

#### **Mandatory Penalties**

- Require all individuals that are arrested for a violation of the City's graffiti laws and pleads guilty will be automatically assessed the mandatory penalties and will not be subject to court proceedings.
- If the individual does not plead guilty, the individual shall be prosecuted by the City Attorney and must go through court proceedings. If the individual is found guilty, in addition to the mandatory penalties, the individual may face additional penalties and will be liable for attorney and court costs.
- The City Attorney shall be required to prosecute violators of the graffiti laws.

#### **Juveniles – Mandatory Penalties**

- Juveniles will be required to remove their own graffiti and/or remove graffiti throughout the City as a part of the juveniles' mandatory minimum of 24 hours of community service.
- For every additional violation, the community service hours are doubled.
- Juveniles will be required to have additional curfew restrictions for a minimum of six months. The restrictions must include limits on the juvenile being in public with other juveniles without a parent or guardian. Restrictions will be determined by the City Attorney.

### **Adults – Mandatory Penalties**

- Adult graffiti violators will now be required to be charged a misdemeanor.
- Adult graffiti violators shall serve a mandatory minimum of 48 hours of community service in addition to the penalties associated with the misdemeanor. The community service must include removing their own graffiti and/or removing graffiti throughout the City.
- The fine and community service hours are doubled for every additional violation.

### **Accountability Reports**

- The City Attorney shall provide an annual report of the prosecutions and penalties assessed to the PS&NS Committee.
- The Director must prepare an annual report about the success rate of the City's efforts to collect payment for damages from adult graffiti violators and parents of juvenile graffiti violators.
- Require the San Diego Police Department to separate out graffiti statistics from vandalism statistics. Require a quarterly report be submitted to the PS&NS Committee.

## **PROBLEM AND NEED FOR ORDINANCE**

Gang and gang violence is a serious problem in San Diego. To end the cycle of gang recruitment, the City must focus on ways to deter juveniles from getting involved in the gang culture.

San Diego Police Chief Lansdowne recently stated in the *Epoch Times*:

*"The most serious problems I think we have in the city of San Diego are gangs and gang violence. They are consistently bringing new recruits into their circle of violence, and it's a cycle that's pretty prevalent. What you see are younger people drafted into some of these neighborhoods where gangs control them. They are enticed into one of these groups because they usually have problems in their home environment, and it goes from dropping out of school to auto theft, to armed robbery, to serious violence. That's where the drive-by-shootings come from. It's a systemic problem for San Diego and all big cities. It is probably the most difficult, serious, and long-lasting crime that we have. In many cases who we see involved in gang violence are generations of families all tied to gangs."*

Graffiti has been linked to gang activity. One way to deter juveniles from getting involved in gangs is to introduce juveniles to the justice system and consequences earlier. Often graffiti is considered a nuisance and not an entry-level crime that can be the first step for a juvenile to get involved in more gang activity.

Even the City's municipal code states: "*The City finds and determines that graffiti is obnoxious and constitutes a public nuisance, and must be abated to avoid the detrimental impact of such graffiti on the City and its residents and prevent the further spread of graffiti.*"

In 1999, the San Diego Police Department, Mid-City Division did an analysis of the taggers involved in the Mid-City area. They found:

- "Research also disclosed that the demographic profile of taggers (graffiti writers) in Mid-City roughly matched national findings."
- "Gang and tagger crews comprise 90 percent of the problems in Mid-City, as they all mark territory, bomb in packs, and cross out rivals. The solo tagger causes only 10 percent of the problem, is considered a "lone wolf," and tags everywhere."
- "After analyzing the graffiti survey, police looked at the social aspect of graffiti. They found that tagging is part of a natural progression to gang activity."
- "An erroneous belief is that taggers come from single-parent homes. The survey showed that 60 percent of the taggers live in two-parent homes."

Graffiti also involves financial damages that adversely affect law-abiding San Diegans. The City's current law further penalizes the victims of vandalism by requiring them to pay for the clean-up.

"The City of San Diego spends more than \$1 million each year on graffiti abatement education and enforcement. This amount does not include the millions more spent by other public agencies, utility companies, and private property owners to remove graffiti from their properties. Nationwide, the American public spends nearly \$12 billion each year to fight graffiti."

– *San Diego Police Department Web site*

## **BACKGROUND**

### **GRAFFITI PREVENTION AND SUPPRESSION PROGRAM**

In 2000, the San Diego Police Department won the Herman Goldstein Award for Excellence in Problem-Oriented Policing for their Graffiti Prevention and Suppression Program. The program was run and implemented by the Mid-City Division.

When the Mid-City Division first started investigating the graffiti problem and developing its program, it found that there was a decrease in calls-for-service for graffiti. This may have suggested that the graffiti problem was getting under control.

This was incorrect and the Mid-City Division found the following:

- "However, based on the intense community concern and the incomplete survey that found more than 300 instances of graffiti, the team concluded that the problem was under-reported because of the complacency of residents who felt that the problem couldn't be solved and that there were serious shortfalls in enforcement and arrests."
- "The 300 instances of graffiti were concentrated in 2 square miles of the division, and only 70 percent of the graffiti tags were reported. Police found the crime cases for graffiti difficult to extract because all vandalism cases were logged under the same Penal Code Section: 594(b)(4)."

The Mid-City's Graffiti Prevention and Suppression Program resulted in a 90-percent reduction in more than 300 instances of graffiti in the Mid-City Division. Due to financial and budgetary constraints the program has been discontinued.

The proposed ordinance before the PS&NS Committee today incorporates elements of this Graffiti Prevention and Suppression Program and adds new elements with the goal to decrease graffiti and ultimately gang activity. The proposed ordinance takes into account the City's budgetary constraints and must be implemented within the budget parameters.

### **"BROKEN WINDOW" THEORY**

The concept of taking the most minor of crimes seriously is not new but has proven to be effective.

In March 1983, James Q. Wilson and George L. Kelling published an article in the *Atlantic Monthly* about a new crime fighting theory known as "broken windows." The theory states:

*if the first broken window in a building is not repaired, then people who like breaking windows will assume that no one cares about the building and more windows will be broken. Soon the building will have no windows....*

The "broken windows" theory stated that crime was the result of lax police efforts and stricter law enforcement policy is the primary ingredient to promoting safer communities. Wilson and Kelling theorized that if rude remarks by loitering youth were left unchallenged they will be under the impression that no one cares and their behavior will likely escalate to more serious crimes.

Former New York Mayor Rudy Giuliani instituted the "broken windows" theory when he became mayor in 1994. Giuliani ordered police to enforce even the lowest level offenses including jaywalking, vagrancy, and public intoxication. This led to a dramatic drop in overall crime, particularly serious crime.

### **SUMMARY OF PROPOSED ORDINANCE**

#### **Declaration and Purpose of Graffiti Laws**

- The proposed ordinance will recognize graffiti is a crime, is often linked to gang activity and causes financial damages on law-abiding San Diegans.  
*Current law recognized graffiti only as obnoxious and a public nuisance.*
- The proposed ordinance will state that all taggers, both juveniles and adults, will have mandatory penalties and consequences.  
*Current law does not recognize all taggers will face mandatory penalties.*

#### **Mandatory Consequences for Graffiti Crimes**

- The City Attorney will be **required** to charge and prosecute all taggers with a misdemeanor.  
*Current law does not require the City Attorney to charge and prosecute all graffiti crimes.*

- Taggers who plead guilty shall automatically be assessed the mandatory penalties and will not be subject to court proceedings.  
*Current law does not require mandatory automatic penalties for violators of the City's graffiti laws.*
- If the tagger does not plead guilty, he/she shall be prosecuted by the City Attorney and must go through court proceedings. If the individual is found guilty, in addition to the mandatory penalties, the individual may face additional penalties and will be liable for attorney and court costs.  
*Current law does not require prosecution of violators of the City's graffiti laws.*

#### **Juveniles – Mandatory Penalties**

- The proposed ordinance will now require juvenile taggers to remove their own graffiti and/or remove graffiti throughout the City as a part of their mandatory minimum of 24 hours of community service.  
*Current law does not require juveniles to do graffiti abatement as part of their required community service. Current law also does not require all juvenile taggers must face mandatory penalties and consequences.*
- Every additional violation, the juvenile taggers' community service hours are doubled.  
*Current law does not require enhanced penalties for additional graffiti violations.*
- Juvenile taggers shall have additional curfew restrictions for a minimum of six months. The restrictions must include limits on the juvenile being in public with other juveniles without a parent or guardian.  
*Current law does not require additional curfew restrictions be placed on juveniles who violate graffiti laws.*

#### **Adults – Mandatory Penalties**

- Adult taggers will now be required to be charged a misdemeanor.  
*Current law does not require adult taggers be charged a misdemeanor.*
- Adult taggers shall serve a mandatory minimum of 48 hours of community service in addition to the penalties associated with the misdemeanor. The community service must include removing their own graffiti and/or removing graffiti throughout the City.  
*Current law does not require adult taggers to do community service in addition to the penalties assessed from the misdemeanor.*
- Every additional violation, the fine and community service hours are doubled.  
*Current law does not require enhanced penalties for additional graffiti violations.*

#### **Accountability and Transparency Reports**

- The City Attorney shall provide an annual report of the prosecutions and penalties assessed to the PS&NS Committee.  
*Current law does not require accountability reports on graffiti prosecutions from the City Attorney.*
- The Director of the Neighborhood Code Compliance or the Director authorized by the Mayor must prepare an annual report on the success rate of the City's efforts to collect payment for damages from adult graffiti violators and parents of juvenile graffiti violators.  
*Current law does not require accountability reports on the City's collection efforts for graffiti violators.*

- The San Diego Police Department shall separate out graffiti statistics from vandalism statistics and submit an annual report to the PS&NS Committee.  
*Current law does not require the Police Department to separate out graffiti statistics from vandalism statistics.*

## **ORDINANCE CHANGES COMPARED TO CURRENT LAW**

### **PROPOSED ORDINANCE: §54.0401 Declaration of Purpose**

- (a) The City finds and determines that graffiti is a crime that damages property, constitutes a public nuisance, and is a crime that can be related to gang activity. Individuals, both juveniles and adults, who commit graffiti are to be prosecuted, pay for the damage, and face other penalties.
- (b) It is the purpose and intent of this Division to provide a procedure for removal of *graffiti* from surfaces on public or private property in order to reduce blight and deterioration within the City and to protect the public health and safety.
- (c) Graffiti must be abated to avoid the detrimental impact of such graffiti on the City and its residents and prevent the further spread of graffiti.

### **CURRENT ORDINANCE: §54.0401 Declaration of Purpose**

- (a) It is the purpose and intent of this Division to provide a procedure for removal of *graffiti* from surfaces on public or private property in order to reduce blight and deterioration within the City and to protect the public health and safety.
- (b) The City finds and determines that *graffiti* is obnoxious and constitutes a public nuisance, and must be abated to avoid the detrimental impact of such graffiti on the City and its residents and prevent the further spread of *graffiti*.

### **PROPOSED ORDINANCE: §54.0404 Enforcement Remedies**

- (a) Violations of this Division shall be prosecuted as misdemeanors subject to the fines and custody provided in Municipal Code Section 12.0201. The City Attorney and the Director may seek injunctive relief and civil penalties in the Superior Court pursuant to Municipal Code Section 12.0202 or pursue any administrative remedy as provided in Chapter 1 of this Code.
- (b) Any act of willful misconduct of an adult who violated Section 54.0403 of this Code must include a mandatory minimum of 48 hours of community service. The community service must include one or both of the following removing their own graffiti or removing graffiti throughout the City.
- (c) For every additional violation, the fine and community service hours shall be doubled.
- (d) The City Attorney shall prepare an annual report on the prosecutions and penalties assessed for the City Council's Public Safety and Neighborhood Services Committee.

### **CURRENT ORDINANCE: §54.0404 Enforcement Remedies**

Violations of this Division may be prosecuted as misdemeanors subject to the fines and custody provided in Municipal Code Section 12.0201. The City Attorney and the Director may seek injunctive relief and civil penalties in the Superior Court pursuant to Municipal Code Section 12.0202 or pursue any administrative remedy as provided in Chapter 1 of this Code.

**PROPOSED ORDINANCE: §54.0410 Cost Recovery**

- (a) Any act of willful misconduct of an adult who violated Section 54.0403 of this Code and whose willful misconduct caused damage to property shall be liable for any damages resulting from the willful misconduct in accordance with California Civil Code section 1714.1(b).
- (b) The Director must prepare an annual report of the results to the City Council's Public Safety and Neighborhood Services Committee.
- (c) The Director shall follow the cost recovery procedures found in Division 3, Article 3 of Chapter 1 of this Code. Except as provided in 54.0410(b), no costs shall be assessed against any property owner who was not responsible for, or who did not cause, the placement of the *graffiti* on the affected premises.
- (d) The Director may recover the costs of abatement as to property owners whose properties have been abated by the City more than five times within a twelve month period;
- (e) In deciding whether to recover abatement costs under this Section, the Director may consider the financial and physical ability of the property owner to abate the property;
- (f) Cost recovery procedures shall also apply to parents of juveniles who violate Section 54.0405 of this Code.

**CURRENT CODE: §54.0410 Cost Recovery**

- (a) The Director shall follow the cost recovery procedures found in Division 3, Article 3 of Chapter 1 of this Code. Except as provided in 54.0410(b), no costs shall be assessed against any property owner who was not responsible for, or who did not cause, the placement of the *graffiti* on the affected premises.
- (b) The Director may recover the costs of abatement as to property owners whose properties have been abated by the City more than five times within a twelve month period;
- (c) In deciding whether to recover abatement costs under this Section, the Director may consider the financial and physical ability of the property owner to abate the property;
- (d) Cost recovery procedures shall also apply to parents of juveniles who violate Section 54.0405 of this Code.

*(Amended 10-16-2000 by O-18863 N.S.)*

**PROPOSED CODE: §54.0411 Parent Responsibility**

- (a) Any act of willful misconduct of a minor who violated Section 54.0403 of this Code and whose willful misconduct caused damage to property not in excess of \$25,000, shall cause the parent or guardian having custody and control of the minor to be jointly and severally liable with the minor for any damages resulting from the willful misconduct in accordance with California Civil Code section 1714.1(b).
- (c) The Director must prepare an annual report of the results to the City Council's Public Safety and Neighborhood Services Committee.

**CURRENT CODE: §54.0411 Parent Responsibility**

Any act of willful misconduct of a minor who violated Section 54.0403 of this Code and whose willful misconduct caused damage to property not in excess of \$25,000, shall cause the parent or guardian having custody and control of the minor to be jointly and severally liable with the minor for any damages resulting from the willful misconduct in accordance with California Civil Code section 1714.1(b).

*("Parent Responsibility" added 2-13-1995 by O-18163 N.S.)*

**PROPOSED ORDINANCE: §54.0412 Community Service**

- (a) Any juvenile convicted of willful misconduct in violation of Section 54.0405(a) shall perform a mandatory minimum of 24 hours of community service which must include one or both of the following: removing their own graffiti or removing graffiti throughout the City. One (1) parent or legal guardian shall be present at the community service site for at least one-half of the community service hours required of the juvenile.
- (b) Any juvenile convicted of willful misconduct in violation of Section 54.0405(a) shall have additional curfew restrictions for a minimum of six months. These restrictions will be determined by the City Attorney and shall include limits on the juvenile being in public with other juveniles without a parent or guardian.
- (c) For every additional violation, the community service hours shall be doubled.

**CURRENT CODE: §54.0412 Community Service**

Any juvenile convicted of willful misconduct in violation of Section 54.0405(a) shall perform a minimum of twenty-four (24) hours of community service. One (1) parent or legal guardian shall be present at the community service site for at least one-half of the community service hours required of the juvenile.

*("Community Service" added 2-13-1995 by O-18163 N.S.)*

**PROPOSED ORDINANCE:**

The San Diego Police Department is required to separate out graffiti statistics from vandalism statistics. Annual reports are to be submitted to the City Council's Public Safety and Neighborhood Services Committee.